IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5553 OF 1996

Sai Education Society & ors.... Petitioner

versus

Khan Zuber Usman & others..... Respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 2ND MARCH, 2007

JUDGMENT;

1. Aggrieved by the judgment and order passed by the School Tribunal, allowing the appeal filed by the respondent no.1 in appeal no. 142 of 1995, the present writ petition has been filed. Few facts that are necessary to adjudicate the issue that emerges in this petition are narrated hereinbelow.

2. In the past there was one society by name Social society which was administering two schools, one each at village Sai and village Morba. Sometime in the year 1990 it was decided to transfer one of the schools, administered by respondent no.1 viz. the school at Sai in favour of Sai Education Society. When the proposal for transfer of the said school at Sai was under consideration of the Government, it was agreed that the employees working with the respondent no.1 be given an option as to whether they would like

to continue with the old society or they would opt for the services of new society by name Sai Education Society. The final order granting permission to transfer the school was passed by Dy. Director of Education in the year 1992, before that the respondent no.1 had completed the formalities in regard to seeking of option from its employees.

3. The present respondent no.1 was appointed way back in the year 1972 as junior clerk under the respondent no.2 who gave his option to work in the school at Morba. It may not be out of place to state that in the year 1988, the petitioner was working in the school at Sai. Record reveals that the present respondent no.1 by name Khan Juber Usman was working there as a junior clerk and there was one more junior clerk working in the school at Morba by name A.G.S. Rohakar. Though the respondent no.1 gave option to work in the school at Morba, the other junior clerk by name Rohakar was not agreeable for his consequential transfer in place of respondent no.1 at Sai. This fact is evident from the communication dated 20-3-1990, which is filed as Exh.I along with the affidavit-in-reply. It is thus clear that office order was issued in regard to interse transfer of respondent no.1 and Rohakar on 20-3-1990.

4. The record further reveals that Rohakar instituted a civil suit which came to be decreed. In view of filing of suit by Rohakar in civil court and on account of passing of the injunction order, though the present respondent no.1 was relieved, he could not join in the post occupied by Rohankar as he did not hand over the charge. Consequently respondent no.1 moved to the petitioner by making a reference that on account of pendency of the suit and the injunction order passed, it is not possible for respondent no.1 to join at Morba and he had to continue till the decision of the suit in Sai. The petitioner favourably considered the representation and permitted respondent no.1 to continue at Sai. This situation continued till the year 1995 when the impugned order came to be passed by the petitioner dated 14-10-1995. But by the said order dated 14-10-1995 the petitioner relieved the respondent no.1 from the post of junior clerk and as a consequence thereof the respondent no.1 stood terminated from service. The relieving order did not specify as to where the respondent no.1 has to go and there was no place where the petitioner could have posted him. The petitioner expected the respondent no.1 to approach the school at Morba under the other Management, for joining occupied by Mr. Rohankar.

5. In this facts situation, the respondent no.1 filed

appeal before School Tribunal calling in question the legality and validity of the order of termination dated 14-10-1995. The tribunal found that by exercising option by respondent no.1 showing his willingness to serve in the school at Morba, he has not forfeited the claim to the post of junior clerk, and as a deadlock came to be created on account of the suit filed by Rohakar being decreed, the respondent no.1 had to be retained at Sai.

6. The learned counsel appearing for the petitioner has contended that respondent no.1 was senior to Rohakar and it was obligatory on the part of the other society at Morba to have absorbed the respondent no.1 in that school. However, having regard to the happening of events, that had taken place, viz. filing of civil suit by Rohakar and obtaining the injunction, restraining the management for transferring him to the school at Sai, the deadlock had come into being and it is not in dispute that respondent no.1 and Rohakar both were working as junior clerks and were to be exchanged, but one of them had obtained an injunction order, which culminated in passing of a decree in his favour and as such situation had occurred which preclude the respondent no.1 from resuming the duties at Morba.

7. Having regard to the totality of the facts and

circumstances of the case, the tribunal has held that the impugned order dated 14-10-1995 whereby the respondent no.1 has been relieved expecting him to join in the school at Morba, is an order of termination and the tribunal proceeded to allow the appeal.

8. The learned counsel for the respondent points out that truly speaking there was no previty of contract between the respondent no.1 and the society at Morba when the relieving order came to be passed on 14-10-1995 and thus in the submission of the learned counsel, the present order could not have been passed by the petitioner expecting him to join the duties at Morba. There would not be any use in making an enquiry into the fact as to who is right and who is wrong and the fact remains that respondent no.1 is in continuous service since 1972, and he would be deprived of his job if held otherwise. Equity heavily weigh in favour of respondent no.1.

9. Perused the order passed by the tribunal. The same does not suffer from any illegality warranting interference in exercise of writ jurisdiction. In the result, the writ petition fails and it is dismissed.

Rule is discharged.

....